

REMARKS

The Office action mailed 9 September 2009, has been received and its contents carefully noted. Claims 29-36 and 39 were pending, claims 31-34 and 36 were withdrawn from consideration, and claims 29, 30, 35 and 39 were rejected. By this Response, claims 29 and 30 have been amended and claim 40 is new. Support may be found in the Specification and claims as originally filed. No statutory new matter has been added. Therefore, entry of the amendment and reconsideration in view of the following are respectfully requested.

Interview Summary

Applicants appreciate the Examiner and her Supervisor taking the time to conduct a personal interview on 25 August 2009. During the interview the Examiners indicated that they would discuss the software means limitation with a consult to determine whether such conferred patentable distinctiveness.

Rejection under 35 U.S.C. 112, first paragraph

The Examiner rejected claims 29-30, 35 and 39 under 35 U.S.C. 112, first paragraph, as lacking written description support. Specifically, the Examiner deemed that the “adding means”, “measuring means” and “software means” lacked written description support.

Applicants respectfully submit that this written description rejection should properly be withdrawn in view of the amendment to the claims.

Applicants submit that written description support of the cartridge of claims 29, 30 and 40 may be found in the specification. See, for example, page 11, lines 9-11 and page 28, line 28 to page 30, line 13. Written description support for the “detector” is inherent and would be understood and recognized by those skilled in the art based on the teachings of the specification. See, for example, page 28, lines 23-28.

Therefore, Applicants respectfully submit that the specification provides sufficient written description support for claims, as amended.

Rejection under 35 U.S.C. 112, second paragraph

The Examiner rejected claims 29-30, 35 and 39 under 35 U.S.C. 112, second paragraph,

as being indefinite.

Applicants respectfully submit that the claims, as amended, are not intended to invoke 35 U.S.C. 112, sixth paragraph. Therefore, the rejection under 35 U.S.C. 112, second paragraph, should properly be withdrawn.

Rejection under 35 U.S.C. 102(b)

The Examiner rejected claims 29 and 35 under 35 U.S.C. 102(b) as being anticipated by Doretti et al.

Applicants note that the Examiner did not reject claim 30 as being anticipated by Doretti et al. As claim 29 has been amended to include a cartridge, Applicants respectfully submit that the claims, as amended, are novel.

Therefore, the rejection under 35 U.S.C. 102(b) should properly be withdrawn.

Rejection under 35 U.S.C. 103(a)

The Examiner rejected claims 29, 30, 35, and 39 under 35 U.S.C. 103(a) as being unpatentable over Doretti et al. in view of Magnotti et al. and further in view of Ellman et al.

Applicants respectfully submit that Doretti et al., alone or in combination with Magnotti et al and Ellman et al., does not teach or suggest the claimed invention as a whole. Specifically, the cited documents not teach or suggest any method or device capable of assaying a given protein which belongs to a plurality of proteins having similar or overlapping properties towards a plurality of substrates. As such, the cited documents do not teach or suggest a device which has a cartridge containing the plurality of substrates to be contacted with a plurality of aliquots of the test sample.

As explained previously, a protein is not the same as a substrate for the protein. Doretti et al. teaches measuring substrates with a device having immobilized proteins, i.e. cholinesterases. Doretti et al. does not teach or suggest any method or device which is capable of measuring a given protein having overlapping properties with a plurality of proteins using a plurality of substrates. Thus, Doretti et al. can not possibly be read as teaching a cartridge containing a plurality of substrates to be contacted with a test sample.

Applicants respectfully submit that the device of Doretti et al. can not be modified to

contain the cartridge of Magnotti et al. and/or to perform the assay of Ellman et al. as the modification would render the prior art invention being modified unsatisfactory for its intended purpose, i.e. to assay substrates (instead of proteins). Therefore, there is no suggestion or motivation to make the proposed modification or combine the disclosures of Doretti et al., Magnotti et al. and Ellman et al. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Similarly, Applicants respectfully submit that the device of Doretti et al. can not be modified to contain the cartridge of Magnotti et al. and/or to perform the assay of Ellman et al. as the proposed modification or combination would change the principle of operation of the invention of Doretti et al., i.e. assay substrates using proteins. *See In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Therefore, for at least these reasons including the arguments previously submitted, Applicants respectfully submit that a *prima facie* case of obviousness has not been established and the rejection under 35 U.S.C. 103(a) must properly be withdrawn.

Request for Rejoinder

Applicants respectfully request rejoinder of the withdrawn claims which ultimately depend on claim 29.

Request for Interview

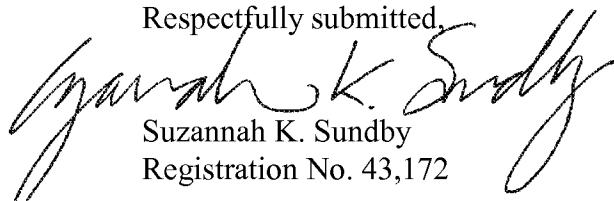
Either a telephonic or an in-person interview is respectfully requested should there be any remaining issues.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefor are hereby authorized to be charged to **Deposit Account No. 210-380**, Attorney Docket No. **034047.003DIV1**
(WRAIR 00-23).

Respectfully submitted,



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Date: 9 December 2009
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